

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Flontal Neville Turner,
SSN: XXX-XX-5710
and
Brooke Anne Turner
SSN: XXX-XX-0512

CHAPTER 13 CASE

CASE NO. 04-32764

Debtors.

AMENDED NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: The Debtor(s) and other entities specified in Local Rule 9013-3(a).

1. Caberallo, LLC, (hereinafter "Secured Creditor"), by its undersigned attorney, moves the court for the relief requested below and gives notice of hearing herewith.
2. The Court will hold a hearing on this motion on November 1, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before the above entitled Court located at U.S. Bankruptcy Court, 200 U.S. Courthouse, Court Room 228B, 316 North Robert Street, St. Paul, Minnesota 55102.
3. Any response to this motion must be filed and delivered not later than October 27, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than October 21, 2004 which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on May 6, 2004. The case is now pending in this Court.

5. This Motion arises under 11 U.S.C. §362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 through 3019-1. Movant requests relief from the automatic stay with respect to the subject property. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebt to Secured Creditor in the original principal amount of \$126,356.55, as evidenced by that certain Contract for Deed dated March 19, 2004, a copy of which is attached hereto as Exhibit A, together with interest thereon. Said Contract for Deed was executed by Flontal Turner and Brook Turner. The property is located in Ramsey County, Minnesota and is legally described as follows to-wit:

Lot 17, Block 16, Stinson's Addition to the City of St. Paul.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. §362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This Secured Creditor's interest in the property is not adequately protected where, as of September 30, 2004, Debtor is delinquent in the making of monthly payments as required for the months of September 1, 2004 through the present date, in the amount of \$1,243.56 accruing late charges and attorneys' fees and costs of \$97.16. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective organization.

11. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

12. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an Order for Judgment that the automatic stay provided by 11 U.S.C. §362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated: October 14, 2004

MORRIS, CARLSON & HOELSCHER, P.A.

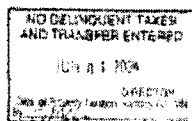
By: /s/ Richard M. Carlson
Richard M. Carlson (Atty. Reg. No. 187148)
Kelly Vince Griffiths (Atty Reg. No. 232695)
7380 France Avenue South, Suite 200
Minneapolis, MN 55435
(952) 832-2000
Attorneys for Secured Creditor

DOCH 3758676

Certified Document
JUNE 11, 2004 07:04:00PMOFFICE OF RECORDS
COUNTY CLERK

For Record: 135.00

JUN 11 2004 07:04:00PM

SELLER CONTRACT FOR DEED
Seller's Address: Information

Date: 6/11/2004

EXCEL TITLE, LLC
6900 WEDGEWOOD RD. #450
MAPLE GROVE, MN 55311

THIS CONTRACT FOR DEED (the "Contract") is made on the above date by Excel Title, LLC, a limited liability company seller, whether one or more, and Floral Toman and Brock Toman, husband and wife, Purchasers, individually and jointly.

Seller and Purchasers agree to the following terms:

1. **PROPERTY DESCRIPTION.** Seller hereby sells and Purchasers hereby buy a real property in Ramsey County, Minnesota, described as follows:

Lot 11, Block 10, Strawn's Addition to the City of Saint Paul, Ramsey County, Minnesota.

together with all improvements and appurtenances belonging thereto (the "Property"). A map or maps otherwise specified. Seller hereby covenants, prior to the sale of the Property to Purchasers on the date hereof.

Seller covenants as follows:

1. The Seller certifies that the Seller does not know of any wells on the described real property.
 - a. A well disclosure certificate is required by this document.
 - b. Seller hereby certifies that the property described in this instrument and hereby certifies that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.
2. **TITLE.** Seller warrants that title to the Property is, on the date of this Contract, subject only to the following exceptions:
 - (a) Liens and encumbrances, including but not limited to effective mortgages previously recorded and declarations of record, if any.
 - (b) Easements of minerals or mineral rights by the State of Minnesota, if any.
 - (c) Utility and drainage easements which do not interfere with present improvements.
 - (d) Applicable laws, ordinances and regulations.
 - (e) The lien of real estate taxes and improvements of special assessments which are payable by Purchasers pursuant to paragraph 3 of this Contract, and
 - (f) The following liens or encumbrances:
3. **DELIVERY OF DEED AND CLOSING.** On the day of the closing of this Contract, Seller shall:
 - (a) Deliver a deed, which shall be in favor of Purchasers a limited liability company, to the following form, and a map or maps to the Property to Purchasers, subject only to the following exceptions:
 - (i) Liens or encumbrances referred to in paragraph 2(a), (b), (c), (d), and (e) of this Contract.
 - (ii) Liens, encumbrances, or other claims or other matters which Purchasers has created, suffered or permitted to accrue after the date of this Contract, and
 - (iii) The following liens or encumbrances:
 - (b) Deliver to Purchasers the instrument to be in the Property, without further assistance, to the extent required by the purchase agreement, if any, between Seller and Purchasers.

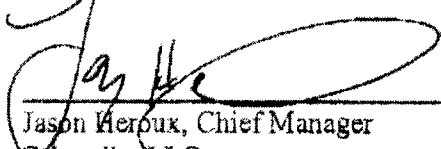


VERIFICATION

I, Jason Heroux, Chief Manager of Caberallo, LLC, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: October 14, 2004

Signed:



Jason Heroux, Chief Manager
Caberallo, LLC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

CHAPTER 13 CASE

Flontal Neville Turner
SSN: XXX-XX-5710
and
Brooke Anne Turner
SSN: XXX-XX-0512

CASE NO. 04-32764

Debtor.

**AMENDED
MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR RELIEF FROM STAY**

- I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. §362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. §362(g) the burden is on the Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

- a. As of September 1, 2004, Debtors are delinquent for the monthly payments as required in the amount of \$1,243.56; accruing late charges and attorneys' fees and costs of \$97.16.
- b. Debtor has failed to make any offer of adequate protection.
- c. Debtors' failure to meet Debtors' obligations to make payments as they become due after filing of the bankruptcy petition, constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. §362(d)(1). A continued failure by Debtors to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to

relief from the automatic stay. See Reinvold v. Dewey State Bank, 942 F.2d 1304 (8th Cir. 1991), and In Re Whitebread, 18 B. R. 193 (Bkrcty. D. Minnesota 1982).

CONCLUSION

Movant/Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. §326(d)(1) for cause, and where its interest in the secured property is not adequately protected.

Secured Creditor respectfully requests an Order of this Court modifying the automatic stay consistent with the attached proposed Order.

Respectfully Submitted,

Dated: October 14, 2004

MORRIS, CARLSON & HOELSCHER, P.A.

By: /s/ Richard M. Carlson
Richard M. Carlson (Atty. Reg. No. 187148)
Kelly Vince Griffitts (Atty Reg. No. 232695)
7380 France Avenue South, Suite 200
Minneapolis, MN 55435
(952) 832-2000
Attorneys for Secured Creditor

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UNSWORN CERTIFICATE OF SERVICE

I, Richard M. Carlson, declare under penalty of perjury that on October 14, 2004, I mailed copies of the annexed Amended Notice of Hearing and Motion for Relief from Stay, Scanned Verification, Scanned Exhibit, Amended Memorandum in Support of Motion for Relief from Stay, Unsworn Certificate of Service; and Proposed Order to each person/entity referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office box at Edina, Minnesota addressed to each of them as follows:

United States Trustee
1015 U S Courthouse
300 South 4th Street
Minneapolis, MN 55415

(Debtor(s))

Flontal Neville Turner
747 Edgerton Street
St. Paul, MN 55101

(Trustee)

Jasmine Z. Keller
310 Plymouth Building
12 South Sixth Street
Minneapolis, MN 55402

(Debtor(s) Attorney)

Curtis K. Walker
4356 Nicollet Avenue So.
Minneapolis, MN 55409

Brooke Anne Turner
747 Edgerton Street
St. Paul, MN 55101

Dated: October 14, 2004

MORRIS, CARLSON & HOELSCHER, P.A.

By: /s/ Richard M. Carlson
Richard M. Carlson (Atty. Reg. No. 187148)
Kelly Vince Griffitts (Atty Reg. No. 232695)
7380 France Avenue South, Suite 200
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ORDER TERMINATING STAY

This matter came before the Court on November 1, 2004, upon the motion by Caberallo, LLC for an order terminating the stay. Kelly Vincent Griffiths of the law firm of Morris Carlson & Hoelscher, P.A. appeared on behalf of Vendor/Secured Creditor. Other appearances were duly noted on the record. Based upon the motion, argument of counsel and all files, records and proceedings herein.

IT IS HEREBY ORDERED,

1. The stay under 11 U.S.C. § 362(a) of the Bankruptcy Code is terminated as to that certain Contract for Deed dated March 19, 2004, executed by Debtors as Vendee. The Contract for Deed covers real property situate in the State of Minnesota, County of Ramsey, legally described as:

Lot 17, Block 16, Stinson's Addition to the City of St. Paul.

Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this Order is effective immediately.

Dated this _____ day of _____, 2004.

The Honorable Gregory F. Kishel
U.S. Bankruptcy Court Judge